IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

IN RE: A.L.K. and A.E.K.	:	APPEAL NOS. C-170009 C-170010
	:	TRIAL NO. F11-1728x
	:	
	:	*JUDGMENT ENTRY.*
	:	

We consider these appeals on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Mother, in the appeal numbered C-170009, and father, in the appeal numbered C-170010, appeal from the order of the Hamilton County Juvenile Court terminating their parental rights and awarding permanent custody of their twins, A.E.K. and A.L.K., to the Hamilton County Department of Job and Family Services ("HCJFS"). Because the decision to terminate the parental rights and award permanent legal custody to HCJFS was supported by sufficient evidence and was not against the manifest weight of the evidence, we affirm the juvenile court's judgment.

In June 2011, HCJFS received an interim order for temporary custody of A.E.K. and A.L.K. soon after their premature birth, because of mother's cognitive limitations and father's inability to act as primary caretaker. In September 2011, the children were adjudicated dependent and HCJFS was granted temporary custody.

In September 2013, the juvenile court remanded the children to their parents' custody with protective supervision. However, in May 2014, HCJFS moved for an interim order and filed a complaint for temporary custody of A.E.K. and A.L.K. The juvenile court granted the interim order after it found that both children had lost weight and that the parents' newborn child had died in the home. After being removed from the home, A.E.K. was diagnosed with failure to thrive and A.L.K. was diagnosed with adjustment disorder and posttraumatic stress disorder.

In March 2015, HCJFS amended its complaint and sought permanent custody. The juvenile court adjudicated the children dependent and granted HCJFS temporary custody. In May 2015, HCJFS moved to extend temporary custody, but then, in August 2015, moved to modify temporary custody to permanent custody.

Following a trial before the magistrate, HCJFS's motion for permanent custody of A.E.K. and A.L.K. was granted on October 21, 2016. Mother and father objected. In January 2017, the juvenile court, after hearing oral argument, overruled the objections and adopted the magistrate's decision as the judgment of the court.

Mother and father appealed separately. Mother, in her sole assignment of error, asserts that the juvenile court erred as a matter of law by granting HCJFS's motion for permanent custody because the juvenile court's decision was based on insufficient evidence and was contrary to the manifest weight of the evidence. Father, in his assignment of error, argues that the juvenile court's finding that the best interests of the children were served by awarding permanent custody to HCJFS was against the manifest weight of the evidence. Due to the similarity of their assignments of error, we will address them together.

For a sufficiency challenge, we determine whether there is some evidence to satisfy each element. *In re A.B.*, 1st Dist. Hamilton Nos. C-150307 and C-150310,

2015-Ohio-3247, ¶ 15, citing *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, ¶ 19. In reviewing a challenge to the weight of the evidence, we determine whether the evidence on each element satisfies the clear-and-convincing-standard burden of persuasion. *In re A.B.* at ¶ 15, citing *Eastley* at ¶ 12 and 19. We weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether in resolving conflicts in the evidence, the juvenile court clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed and a new trial ordered. *Eastley* at ¶ 12, and *State v. Thompkins*, 78 Ohio St.3d 380, 678 N.E.2d 541 (1997), citing *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983).

"Parents who are 'suitable' persons have a 'paramount' right to the custody of their minor children." *In re Perales*, 52 Ohio St.2d 89, 97, 369 N.E.2d 1047 (1977). However, "the fundamental interest of parents is not absolute." *In re D.A.*, 113 Ohio St.3d 88, 2007-Ohio-1105, 862 N.E.2d 829, ¶ 11. R.C. 2151.414 governs the termination of parental rights. Before terminating mother's and father's parental rights, the juvenile court had to find by clear and convincing evidence that one of the four conditions listed in R.C. 2151.414(B)(1)(a)-(e) applied and that, in considering the factors set forth in R.C. 2151.414(D), it was in the best interests of the children to be placed in the permanent custody of HCJFS.

In this case, it is undisputed that the condition set forth in R.C. 2151.414(B)(1)(d) was met as to both children—A.E.K. and A.L.K. had been in the temporary custody of HCJFS for more than 12 months of a consecutive 22-month period. Therefore, we focus our analysis on the best-interest determination.

In assessing the best interests of a child, "the court shall consider all relevant factors," including (1) the child's interactions and relationships with parents,

siblings, relatives, foster caregivers, out-of-home providers, and any other person who may significantly affect the child, (2) the wishes of the child, as expressed by the child or through the child's guardian ad litem, (3) the custodial history of the child, (4) the child's need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody, and (5) whether any of the factors in R.C. 2151.414(E)(7)-(11) apply in relation to the parents and the child. R.C. 2151.414(D)(1)(a)-(e).

We find no error in the juvenile court's conclusion that granting permanent custody to HCJFS was in the best interests of the children. The court considered many factors including the children's custodial history, the children's need for legally secure permanent placement, A.L.K.'s interaction with her parents, the children's special needs, and the children's overall improvement emotionally and physically once removed from their parents' care.

HCJFS presented evidence that the children had been in foster care for most of their lives. The evidence demonstrated that mother suffered from cognitive limitations and that she and father did not fully understand the extent of their children's special needs, especially A.E.K.'s aversion to eating. For the several months while in their parents' care, the children had missed several of their medical appointments and had lost weight. A.E.K. had lost weight even with the scheduled bolus feedings, and this weight loss could have placed A.E.K. at risk for organ failure.

Once HCJFS removed the children from their parents' care, the evidence showed that the children improved significantly. Although A.L.K. had been diagnosed with adjustment disorder and posttraumatic stress disorder, her mental and physical health improved with treatment and support from her foster family.

Evidence demonstrated that A.E.K. had a steady weight gain while in foster care and received treatment for his eating aversion.

HCJFS presented evidence that the parents were not consistent in attending the children's medical appointments even after the children had been removed. Although father testified that he rarely missed appointments, the witnesses who testified and the children's medical records that were entered into evidence do not support his claim. Several of HCJFS's witnesses testified that when the parents did attend various appointments, they were defensive and disruptive, made the children feel uncomfortable, and lacked an understanding of the children's needs. The parents assert that their reactions during the children's appointments had been a result of a breakdown in communication.

After reviewing the record, we hold that there was sufficient evidence in the record to support the juvenile court's findings that permanent custody with HCJFS was in the best interests of A.E.K. and A.L.K. Moreover, we cannot say that the juvenile court lost its way when evaluating the persuasiveness of the evidence. Accordingly, we overrule the parents' assignments of error.

We affirm the judgment of the trial court.

A certified copy of this judgment entry is the mandate, which shall be sent to the juvenile court under App.R. 27. Costs shall be taxed under App.R. 24.

MOCK, P.J., ZAYAS and **MYERS, JJ.**

To the clerk:

Enter upon the journal of the court on April 26, 2017
per order of the court _____.

Presiding Judge